HEARING DATE: January 24, 2017 at 11:45 a.m.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re: ADVANCED FLEET MAINTENANCE, INC., Debtor.	**Chapter 7** **Case No. 13-44173 (CEC)**
ROBERT L. GELTZER, as Chapter 7 Trustee of ADVANCED FLEET MAINTENANCE, INC., Plaintiff, v. ADVANCE FLEET MAINTENANCE LLC, AFM MAINTENANCE LTD. and FRANK ALMONA, Defendants.	**Adv. Pro. No. 15-01083 (CEC)**

REPLY AFFIRMATION OF ROBERT A. WOLF IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR WRIT OF EXECUTION AND TURNOVER ORDER

ROBERT A. WOLF, an attorney duly admitted to practice law in this Court, affirms the following to be true under the penalties of perjury:

1. I am a member of the law firm Tarter Krinsky & Drogin LLP, special litigation counsel to Robert L. Geltzer, as chapter 7 trustee (the "**Trustee**" or "**Plaintiff**") of the debtor Advanced Fleet Maintenance, Inc. (the "**Debtor**") in the above-captioned bankruptcy case, and as Trustee, the Plaintiff in the above-captioned adversary proceeding (the "**Adversary Proceeding**"), in which a judgment (the **"Judgment"**) was docketed in favor of Plaintiff and against Defendants Advance Fleet Maintenance, LLC (**"Advance Fleet"**), AFM Maintenance Ltd. (**"AFM"**) and Frank Almona (**"Almona"**) (collectively, **"Defendants"** or **"Judgment Debtors"**) in the amount of $230,000.00 on December 9, 2015. I am fully familiar with the matters set forth herein.

2. I submit this Reply Affirmation in further support of Plaintiff's motion (the "**Motion**") for the issuance of a writ of execution and an order directing non-party American General Life Insurance Company (**"AGL"**) to turn over funds in its possession belonging to defendant/judgment debtor Almona, with respect to an annuity (the **"Annuity"** or **"Annuity Account"**) that was purchased by Almona with his personal funds in 2001, to satisfy partially the Judgment.

3. As set forth in Plaintiff's initial motion papers, the Court has discretion to direct that a portion of the proceeds in the Annuity Account be turned over to Plaintiff pursuant to New York Insurance Law § 3212(d)(2), which provides that a court may order an annuitant "to pay to a judgment creditor or apply on the judgment in installments, a portion of [t]he benefits [under an annuity contract] that appears just and proper to the court, with due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders."

4. Almona opposes the Motion by contending that he is retired from employment, that he "need[s] funds from my annuity in order to pay basic and modest monthly living expenses going forward," and that he purchased the Annuity in 2001 "with the express intent of

saving the funds for my retirement." (Objection of Frank Almona ("Almona Opp."), ¶¶ 2, 3, 10). As discussed herein, Almona's contention that he needs the funds from the Annuity to cover his living expenses is, at best, highly dubious.

5. Almona was asked at his deposition, which was taken on June 6, 2016 in connection with the Trustee's efforts to collect on the Judgment, whether he had "any type of retirement account," and his response was "Not that I remember."[1] (Ex. A[2], p. 130). This means that Almona either purposely failed to disclose the Annuity or that it was not important enough for him to remember. Either way, his assertion in opposition to the Motion that he needs all of the funds for retirement rings hollow in light of his failure to mention or remember that he had a retirement account, when he was specifically asked about this under oath.

6. Moreover, Almona testified at his deposition that he is a mechanic employed by AFM, of which he is the owner, and that he had been receiving a salary from AFM – **he did not testify that he is retired.** (Ex. A, pp. 19, 25-26, 29-30, 106-107). However, even if Almona has retired within the past several months since his deposition was taken, he still fails to demonstrate that he needs all of the funds from the Annuity for his living expenses.

7. Almona has had the same income and expenses for some time now, but has not yet taken any withdrawals from the Annuity – and did not even recall having a retirement account at his deposition – which seems to indicate that the entirety of the funds in the Annuity Account are not needed by him for his living expenses. Almona testified at his deposition that AFM's employees (which would include himself) had not received any salary since the time of Plaintiff's levy on AFM's bank account, which was in approximately April 2016. (Ex. A, pp. 27-30). He testified that his monthly income consisted of social security and Veteran disability

[1] The deposition was taken prior to the production by Almona of documents concerning the Annuity, so at the time of the deposition counsel for Plaintiff was not aware of the existence of the Annuity.

[2] Exhibit A consists of copies of relevant excerpts from Almona's deposition in this matter.

benefits – the same sources of income that he itemizes in opposition to the Motion. (Ex. A, pp. 30-31). Almona further testified that his income goes into his joint bank account with his live-in girlfriend of 19 years, Olga Vlachos[3], and that while he makes monthly car payments, she pays many of the monthly expenses, such as the common charges for the townhouse in which they reside. (Ex. A, pp. 59-65).[4] He does not allege any new expenses since the time of the deposition.

8. It also is noteworthy that Almona claims that his "left knee is 'wired' after a prior operation" (Almona Opp., ¶ 2), yet he sets forth that he has monthly car payments totaling $1,057 (Almona Opp., ¶ 7). If Almona can drive a car, then it is unclear as to the relevancy of the fact that his knee is wired. If he cannot drive a car, then "monthly car payments" are not legitimate expenses.

9. Almona's reliance on *In re Lynch*, 321 B.R. 114 (Bankr. S.D.N.Y. 2005), is misplaced. In *Lynch*, which was a Chapter 7 bankruptcy proceeding that involved the issue of whether an annuity was exempt, the trustee's counsel *conceded* that there were no grounds to challenge the debtor's claim that his annuity was required for necessary living expenses. 131 B.R. at 119. To the contrary, as discussed herein, Almona's claim that the Annuity is required for his living expenses is suspect and does not appear to be asserted in good faith.

10. In sum, there is no valid reason why this Court should not find that it is "just and proper," pursuant to New York Insurance Law § 3212(d)(2), to order that a portion of the approximately $182,000 in the Annuity should be turned over to Plaintiff in partial satisfaction of the outstanding Judgment.

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[3] Ex. A, p. 33.

[4] Almona testified that Ms. Vlachos also has, in addition to the joint bank account with him, her own separate bank account. (Ex. A, p. 64).

WHEREFORE, it is respectfully requested that the Court issue a writ of execution and direct AGL to turn over to Plaintiff a specified portion of the funds in the Annuity Account, and grant such other and further relief in favor of Plaintiff as this Court deems just and proper.

Dated: New York, New York
January 20, 2017

s/ Robert A. Wolf
ROBERT A. WOLF

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
---x
In re:

ADVANCED FLEET MAINTENANCE,

Debtor,

CASE NO.: 13-44173

---x
ROBERT GELTZER, as Chapter 7 Trustee of ADVANCED FLEET MAINTENANCE, INC.,

Plaintiff,

-against-

ADVANCE FLEET MAINTENANCE LLC, AFM MAINTENANCE LTD. and FRANK ALMONA,

Defendants.

Adv. Pro No. 15-01083
---x

1350 Broadway
New York, New York

June 6, 2016
11:00 a.m.

DEPOSITION of FRANK ALMONA, taken before Goldy Gold, a RPR and Notary Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
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the reporter.]

Q. Mr. Almona, have you ever been known by any other name?

A. Nickname.

MR. SCHULTZ: She didn't ask you for a nickname. She asked you if you have any other formal name.

MS. BERNSTEIN: I didn't say "formal."

Q. Were you ever known by any other name?

A. No.

Q. Last name?

A. No.

Q. What's your current residence address?

A. 98-35 South Franklin Avenue, Valley Stream 11580.

Q. What's your date of birth?

A. 3/10/46.

Q. What's your occupation?

A. Mechanic.

Q. Are you presently employed?

A. AFM.

it.

Q. That's seven. So maybe as we do the deposition, perhaps you will remember someone else if that's the case.

MR. SCHULTZ: Excuse me. I think you've been provided with a list of the names. You're welcome to look at it.

A. I got it.

Q. What's the name?

A. Julio Moran.

Q. Are there any officers of the entity?

A. No.

Q. Is there a president?

A. Michael.

Q. Is that Michael Schuler that you referred to?

A. Yes.

Q. For how long has he been the president?

A. 2010.

Q. Have you ever been the president of AFM?

A. I'm the owner.

MR. TRAKAS: Yes or no?

A. No.

MS. BERNSTEIN:

Q. How long has Mr. Schuler been with AFM?

A. Since the inception.

Q. So since about 2005?

A. Yes.

Q. And he's been president since 2010?

A. Yes.

Q. Continuously since that time?

A. Yes.

Q. Was there a president between 2005 to 2010?

A. No.

Q. Is Mr. Schuler a shareholder of AFM?

A. No.

Q. Aside from Mr. Schuler, has there ever been any other officers of AFM, secretary, treasurer, president, vice president?

A. No, no.

Q. These employees, I assume, receive a salary from AFM?

A. Yes.

Q. What bank account are they paid from?

A. TD Bank.

Q. From a checking account?

A. Yes.

Q. Have they been paid the last month?

A. No.

Q. When was the last time any of the employees were paid?

A. At the time of the levy.

Q. You're referring to the bank levy?

A. Yes.

Q. How frequently are the employees paid?

A. Once a week.

Q. Have any of the employees left the company since the time of the bank levy?

A. Left?

MR. SCHULTZ: Do you understand the question?

A. I do. The answer is no.

Q. Have you been receiving complaints from the employees about not getting paid?

MR. SCHULTZ: Objection to the form of the question. I'll let him answer it, but it is probably irrelevant.

A. Okay. The answer would be yes to that. It would have to be yes because they haven't been paid.

MS. BERNSTEIN:

Q. And is there money to pay the employees?

A. No.

Q. What's your plan for paying the employees?

MR. SCHULTZ: Objection to the form of the question. What do you mean his plan?

MS. BERNSTEIN: He can answer if

he understands it.

MR. SCHULTZ: You're presupposing that he has a plan.

Q. Do you have a plan for paying the employees?

A. Right now they are just sitting dormant. They're not working. Hopefully, we can resolve this and I can do something to help them get back to work. That's all I can say.

Q. You said they're not working. Do they come to the office location?

A. They pass by, yes. They want to know what's going on.

Q. Is there any income received by the company?

A. Right now the bank account is levied and it's outstanding. No.

Q. How do you get paid? Do you get a salary from the company?

MR. SCHULTZ: Do you have a time frame for that question?

Q. Currently. Say the last year, how did you get an income?

ALMONA

A. I get a check. I get a check from the company.

Q. How often?

A. Once a week.

Q. I'm talking about in general. I'm talking about the past year, how much do you get paid from the company?

A. $300 a week.

Q. Is that your sole source of income?

A. No.

Q. What other sources of income do you have?

A. My Social Security and disability check.

Q. How much do you get from Social Security a month?

A. $1,400 less medical.

Q. What do you mean "less medical"?

A. They take it out.

Q. So how much do you get?

A. 13.

Q. A check for $1,300 a month?

A. Yes.

MR. SCHULTZ: Is that approximate?

A. Approximately 13, not exactly.

MS. BERNSTEIN:

Q. So is your medical or health insurance provided for through Social Security?

A. Yes.

Q. And for disability, how much do you receive -- is that monthly?

A. Monthly.

Q. How much is that a month?

A. 268, I think, yes.

Q. For how long have you been receiving a disability check?

A. Since the Vietnam War, 1966.

Q. Sir, are you married?

A. No.

Q. Have you ever been married?

A. Yes.

Q. What time period were you married?

A. Two times.

Q. What were those time periods?

your home?

A. Just my girlfriend.

Q. What's your girlfriend's name?

A. Olga.

Q. What's the last name?

A. Vlahos.

Q. And for how long has Ms. Vlahos been living with you?

A. 19 years.

Q. Does anyone else live with you?

A. No.

Q. Does Ms. Vlahos have any children?

A. No.

Q. How old is your daughter?

A. 42.

Q. Does she live in the New York area?

A. Yes.

Q. What's her last name?

A. I would say Almona because she's divorced, so she dropped her --

Q. What was her last name?

A. Rodriguez.

ALMONA

Q. That the mortgage will be paid off?

A. I would get the house, right.

Q. You would get the house. But the mortgage --

A. I had to pay the mortgage to take her name off the deed. In order for me to get her name taken off the deed, the house had to be paid off. That's why I said that.

Q. And another mortgage wasn't obtained at that point?

A. No.

MS. BERNSTEIN: I will ask for the production of documents concerning the pay-off, the satisfaction of that mortgage that Mr. Almona had testified about.

MR. SCHULTZ: Taken under advisement.

Q. Is your residence a condominium unit?

A. Townhouse.

Q. Are there common charges?

A. Yes.

Q. What's the name of the -- is there an -- who are the common charges being paid to?

A. Valley Park Townhouses.

Q. Who pays the common charges?

A. Olga Vlahos.

Q. Do you know how much they are per month?

A. $275.

Q. Do you have a bank account with Ms. Vlahos?

A. I have a joint account.

Q. Which bank?

A. Investor's Bank, I think.

Q. Where are they located? Where is your branch?

A. That would be 31st Street and 23 Avenue.

Q. That's in what part of Queens?

A. Astoria.

Q. Do you have any other bank accounts in your individual name?

A. No.

Q. Just the joint account?

A. Yes.

Q. Is that a checking account?

A. Yes.

Q. Aside from your entity, do you have any savings accounts?

A. No.

Q. Aside from your entities, do you have any money market accounts?

A. No.

Q. How long have you had the joint account?

A. 15 years.

Q. Have you ever had an account in your name individually, just you without anyone else?

MR. SCHULTZ: Excuse me. Can you clarify the time.

MS. BERNSTEIN: I'm establishing a foundation.

Q. Have you ever had a bank account?

A. Yes.

MR. SCHULTZ: Objection to the

form.

Q. When was the last time you had a bank account in your name individually?

A. 15 years ago.

MS. BERNSTEIN: I will mention again towards the end of the deposition about the documents. But we haven't received any documents as we discusses before the deposition with respect to Mr. Almona individually. And among the documents sought by the subpoena are statements of bank accounts in which he has an interest individually or jointly from January 2013 to date.

So I'm going to reiterate production of those bank account statements.

MR. SCHULTZ: Your request is duly noted.

Q. Who is paying the real estate taxes? In the past year, who has been paying the real estate taxes for the house?

A. BQE Boys LLC.

Q. Does BQE Boys LLC have a bank account?

A. No.

Q. So when you say BQE Boys LLC is paying it --

A. It would be Olga Vlahos.

Q. Is there any insurance in connection with the townhouse?

A. Yes.

Q. Who is paying those insurances premiums?

A. That would be Olga.

Q. Have you ever paid any insurance premiums with respect to the townhouse?

A. When I owned it.

Q. When was the last time you paid any insurance payments on the townhouse?

A. When I owned it.

Q. Is there currently a mortgage in place?

A. No mortgage.

Q. Do you know if there are any liens on the townhouse?

A. No liens.

Q. Do you know if the common charge, the assessments are current?

A. They're current.

Q. The real estate taxes and insurance payments, are they current?

A. Yes.

Q. So is Ms. Vlahos paying for those from your joint account? Are the checks drawn to pay those charges from your joint account?

A. Yes.

MR. SCHULTZ: Objection to the form.

A. Wait, wait. I think I'm wrong on that.

Q. I'm sorry?

A. I think she pays from her own account. She has her own bank account.

Q. So you have a joint account and she also has a separate account?

A. She has a separate account.

Q. Is Ms. Vlahos currently employed?

A. Currently, no.
Q. Does she have any income?
A. Well, she has gifts. Her mother.
Q. I'm sorry?
A. Her mother.
Q. Do you give money to Ms. Vlahos?
A. My Social Security check goes into our joint account, and that pays our bills, both checks.
Q. When you say "both checks," you mean the Social Security and disability checks go into your joint account?
A. Yes.
Q. What about the income of AFM?
A. That also goes into the joint account.
Q. So all of your income goes into the joint account?
A. Yes.
Q. And for how long has that been going into the joint account?
A. A long time.
Q. Several years?

ALMONA

Q. Who else would be involved in that decision?
A. Probably Mary Ellen would make the final phone call to see if we can collect.
Q. Would Mr. Schuler be involved in the decision to it being written off?
A. Not really.
Q. What are his day-to-day duties at AFM?
A. Mr. Schuler, he runs the operation.
Q. Is he a mechanic?
A. Yes.
Q. Does he do the hands-on mechanical?
A. No.
Q. When you say he runs the operation, what does that involve?
A. I'm not really sure.
Q. What's his salary?
A. I'm not sure about his salary.
Q. How often are you at the location, at the office, at the shop?

ALMONA

A. Two times, three times a week.

Q. When you're not there during the week --

A. PR.

Q. You're PR?

A. Public relations. I go to customers.

Q. For AFM?

A. Yes.

Q. So you don't devote any time during the week for any other business?

A. No.

Q. Are you a member of any type of club or organization?

MR. SCHULTZ: Objection to the form. What does that mean?

Q. Any type of social club or organization?

MR. SCHULTZ: Objection to the form.

Q. You can answer.

A. Society Fleet Supervisors.

Q. Is this a business organization?

A. No. It is exactly what it says.

ALMONA

Q. Do you have an IRA?
A. I already have one.
Q. How much is in that?
A. 13,000.
Q. What bank is that?
A. I don't know. It's so long ago.
MS. BERNSTEIN: Again, this is part of what we asked for. But we call for production for documents concerning the IRA.
Q. Aside from IRA, are there any other pension accounts that you're a beneficiary or covered under?
A. I'm not sure.
Q. Any type of retirement account?
A. Not that I remember.
Q. Do you hold a judgment in favor of anyone? Do you yourself have a judgment against anyone?
A. No, I don't.
Q. Does AFM or any of your entities have a judgment against anyone?
A. No.
Q. Do you know if you're a

C E R T I F I C A T E

I, Goldy Gold, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of June, 2016.

Goldy Gold

GOLDY GOLD, RPR